

RESOLUTION

WHEREAS, litter, in all its forms, has become a nuisance and threat to public health and safety within Rutherford County; and

WHEREAS, Rutherford County desires to be pro-active in maintaining a safe and healthy environment for the citizens of Rutherford County; and

WHEREAS, the Steering Committee has approved and recommended implementation of an Anti-Litter Resolution; and

WHEREAS, implementation of said Anti-Litter Resolution is in the best interest of the citizens and residents of Rutherford County.

NOW, THEREFORE, BE IT RESOLVED by the Rutherford County Board of Commissioners to approve and implement an Anti-Litter Resolution, a copy of said Resolution being attached hereto as Exhibit "1" and incorporated herein by reference as if set forth verbatim pursuant to Tennessee Code Annotated § 39-14-508 to regulate, control and manage litter in Rutherford County, Tennessee.

RESOLVED this ____ day of _____, 2010.

RUTHERFORD COUNTY, TENNESSEE

ATTEST:

BY: _____
ERNEST BURGESS, Chairman

LISA DUKE CROWELL, County Clerk

ANTI-LITTER RESOLUTION

SECTION 1. SHORT TITLE. This Resolution shall be known and may be cited as the Rutherford County Anti-Litter Resolution.

SECTION 2. DEFINITIONS. For the purposes of this Resolution, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Agricultural: Farms (See Farms) that involve the production for sale of plants and animals useful to man, including but not limited to: forage(s) (See Forage(s)) and sod (See Sod) crops; grains and seed crops; dairy animals and dairy products; poultry, and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids thereof, includes the breeding and grazing of any or all of such animals; bees and apiary products; horticulture (See Horticulture); trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental, and greenhouse products, wholesale nurseries (See Nursery-Wholesale); or lands devoted to a soil conservation or forestry management program. Retail Nurseries (See Nursery-Retail), Commercial Feed Lots (See Commercial Feed Lots), the raising of fur-bearing animals, and kennel(s) (See Kennel(s)) are not considered to be normal agricultural uses and are not privileged to the protections designated for agricultural uses as defined in this Resolution.

Aircraft: Any contrivance now known or hereafter invented, used or designated for navigation or for flight in the air. The word "aircraft" shall include helicopters and lighter-than-air dirigibles and hot air balloons.

County: The county of Rutherford.

Commercial Feed Lots: A single plot or parcel of land where the sole use is for the fattening of livestock for market and is not used in conjunction with any other type of agricultural use located on the same plot or parcel of land.

Commercial handbill: Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter of literature.

(1) Which advertises for sale any merchandise, product, commodity or thing;

(2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales;

(3) Which directs attention to or advertises any meeting, theatrical performance, exhibition or event of any kind for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such

meeting, theatrical performance, exhibition or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order; provided that nothing contained in this clause shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition or event of any kind without a license, where such license is or may be required by any law of this state; or

(4) Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes or for the private benefit and gain of any person so engaged as advertiser or publisher.

Depositor: Individual or entity that physically delivers any material or materials as herein defined.

Farm: A parcel of land equal to or exceeding five (5) acres in size and used for residential and agricultural purposes.

Forage(s): Food of any kind for animals, especially for horses and cattle, as grass, pasture, hay, corn or oats.

Garbage: Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Handbill: A commercial or noncommercial handbill.

Horticulture: The cultivation of plants.

Kennel(s): Any place in or which any number of dogs, cats, etc., are kept for the purpose of sale or in connection with boarding care or breeding, for which a fee is charged.

Litter: "Garbage", "refuse" and "rubbish", as defined herein, and all other waste material which, if thrown or deposited as herein provided, tends to create a danger to public health, safety and welfare.

Material or Materials: Any commercial handbill, handbill, newspaper, or noncommercial handbill.

Newspaper: Any newspaper published at least weekly, intended for circulation among the general public, containing news matters of public interest and is in the form of a newspaper, or any other newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States, in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law; and, in addition thereto, shall mean and include any periodical or current magazine regularly published with not less than four (4) issues per year and sold to the public.

Noncommercial handbill: Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, magazine, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of

literature not included in the aforesaid definitions of a commercial handbill or newspaper.

Nursery-Retail: Places where trees, plants and other landscaping materials are grown for sale to the general public.

Nursery-Wholesale: Places where trees, plants and other landscaping materials are grown for sale to retailers.

Park: A park, reservation, playground, recreation center or any other public area in the County owned or used by the County and devoted to active or passive recreation.

Person: Any person, firm, partnership, association, corporation, company or organization of any kind.

Private premises: Any dwelling, house, building or other structure designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.

Public place: Any and all streets sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.

Publisher: Person or entity creating material or materials for distribution and/or causing material or materials to be distributed.

Refuse: All putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, scrap building materials, and solid market and industrial wastes.

Rubbish: Nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.

Sod: Surface layer of ground containing a mat of grass and grass roots.

Solicited: Any material or materials delivered to a citizen at the citizen's request or by the citizen's acquiescence. "Acquiescence" meaning citizen has not sent written request to publisher to discontinue delivery of material or materials to citizen.

Unsolicited: Any material or materials delivered to a citizen after the citizen has requested in writing for the publisher to no longer deliver material or materials to citizen.

Vehicle: Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

SECTION 3. LITTER IN PUBLIC PLACES. No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the County except in public receptacles or in official state approved landfills. No person shall deposit

grass or yard clippings in the street or in a public drainage way or drainage easement.

SECTION 4. PLACEMENT OF LITTER IN RECEPTACLES SO AS TO PREVENT SCATTERING. Persons placing litter in public receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or public place or upon private property. However, no merchant may place his business refuse in a public receptacle.

SECTION 5. SWEEPING LITTER INTO GUTTERS PROHIBITED. No person shall sweep into or deposit in any gutter, street or other public place within the County the accumulation of litter, dirt or debris from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises and all premises visible to the public and adjacent property owners free of litter.

SECTION 6. LITTER THROWN BY PERSONS IN VEHICLES. No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the County or upon private property of another.

SECTION 7. TRUCK LOADS CAUSING LITTER. No person shall drive or move any truck or other vehicle within the County unless such vehicle is so constructed, covered, or loaded as to prevent any load, contents or litter from being blown, leaked or deposited upon any street, alley or other public place.

SECTION 8. CONSTRUCTION SITE LITTER AND EROSION. The owner and contractor shall contain building materials, construction debris, litter and erosion in such a manner as to prevent it from being blown, washed, carried or deposited upon any street, sidewalk, storm drainage way, public property or private property of another.

SECTION 9. LITTER IN LAKES AND FOUNTAINS. No person shall throw or deposit litter in any fountain, pond, lake, stream, river, creek or any other body of water within the County.

SECTION 10. THROWING OR DISTRIBUTING HANDBILLS IN PUBLIC PLACES. No person shall throw or deposit any handbill in or upon any sidewalk, street or other public place within the County. Nor shall any person hand out or distribute or sell any handbill in any public place; provided, however, that it shall not be unlawful on any sidewalk or other public place within the County for any person to hand out or distribute, without charge to the receiver thereof, any handbill to any person willing to accept it; provided further that it shall be lawful to securely attach a handbill to a vehicle. Nothing herein authorizes a person to stand in the street to distribute handbills.

SECTION 11. DEPOSITING MATERIAL OR MATERIALS ON UNINHABITED OR VACANT PREMISES. No person shall throw, attach to the exterior of the building without owner's permission, or deposit any unsolicited material or materials in or upon any private premises which are temporarily or continuously uninhabited or vacant. For the purpose of this article, "temporarily uninhabited" or "temporarily vacant" means the resident or owner has been absent from the premises for thirty (30) or more consecutive days and written notice of such absence is delivered to the publisher. For purposes of this article, "continuously uninhabited" or "continuously vacant" means the

resident or owner has been absent from the premises for six (6) consecutive months or more and written notice of such absence is delivered to the publisher.

SECTION 12. PROHIBITING DISTRIBUTION OF UNSOLICITED MATERIAL OR MATERIALS. No person shall throw or deposit any unsolicited material or materials upon any private premises if a request in writing by the occupant not to do so is delivered to the publisher.

SECTION 13. DISTRIBUTING MATERIAL OR MATERIALS AT INHABITED PRIVATE PREMISES; EXEMPTION.

(a) *Distributing material or materials at inhabited private premises.* No person shall throw, deposit or distribute any material or materials in or upon private premises which are inhabited, except by permission of the owner or occupant or by handing or transmitting any such unsolicited material or materials directly to the owner, occupant or other person then present in or upon such private premises. Provided, however, that in case of inhabited private premises, such depositor, unless a written request by the owner or occupant to cease delivery is received by publisher, may place or deposit any such material or materials in or upon such inhabited private premises if such material or materials is so placed or deposited as to be reasonably secure and prevent such material or materials from being blown about such premises or sidewalks, streets or other public places under ordinary weather conditions, and except that mailboxes may not be so used when so prohibited by federal postal law or regulations. No person shall knowingly place on, deposit or leave exposed in any private yard or driveway any unsolicited material or materials after the owner or occupant has delivered a written request that same be stopped, which written request is addressed to the publisher of the unsolicited material and which request identifies the name and address location of the owner or occupant who does not desire the material. The written request shall be valid for a period of five (5) years from the date of receipt of the written request or until the occupant moves from the address, whichever occurs first. The publisher of any material or materials who has received a written request to discontinue delivery that is in substantial conformance with this part, shall have twenty (20) days from the date the written request was received in which to discontinue delivery to the requesting citizen. A subsequent delivery within twenty (20) days of the request shall not constitute a violation of this Resolution. Any delivery on the twenty-first (21st) day or on a subsequent day after the publisher has received written notice from the citizen to discontinue delivery shall constitute a violation of this Resolution.

(b) *Exemption for mail or solicited material or materials.* The provisions of this section shall not apply to the distribution of mail by the United States nor to solicited material or materials (as defined herein), except that solicited material or materials shall be placed on private property in such a manner as to reasonably prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property under ordinary weather conditions.

SECTION 14. DROPPING LITTER FROM AIRCRAFT. No person in an aircraft shall throw out, drop or deposit within the County any litter, handbill or any other object.

SECTION 15. POSTING NOTICES PROHIBITED. No person shall post or affix any notice, poster or other paper or device calculated to attract the attention of the public to any lamp post, public utility pole, tree or upon any public structure or building except as may be authorized or required by law.

SECTION 16. LITTER ON OCCUPIED PRIVATE PROPERTY. No person shall throw, deposit or maintain litter on any occupied private property within the County whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon any private property. Private receptacles for refuse must be stored so as not to be visible from the street. Notwithstanding the foregoing, a private receptacle behind the home is permissible although visible to a street behind the residence.

SECTION 17. OWNER TO MAINTAIN PREMISES FREE OF LITTER. The owner or person in control of any private property shall at all times maintain the premises free of litter.

SECTION 18. LITTER ON VACANT LOTS. No person shall throw or deposit litter on any open or vacant private property within the County whether owned by such person or not.

SECTION 19. CLEARING OF LITTER FROM OPEN PRIVATE PROPERTY OF COUNTY. The Code Enforcement Officer is hereby authorized and empowered to notify the owner of any open or vacant private property within the County or the agent of such owner to properly dispose of litter located on such owner's property.

SECTION 20. ENFORCEMENT. All law enforcement agencies, officers, and officials of this state or any political subdivision of this state, or any enforcement agency, officer, or any official of any commission or authority of this state or any political subdivision of this state is authorized, empowered, and directed to enforce compliance with this Resolution.

SECTION 21. PENALTIES. Each and every act that violates this Resolution shall be deemed a distinct and separate act that is punishable by a Fifty Dollar (\$50.00) civil fine for each separate offense. Any individual, agent, or department authorized to enforce this part as articulated in Section 20 may issue a citation ordering the offender of this Resolution to appear in the Rutherford County General Sessions Court for a hearing on the violation(s) of this Resolution. The offender may make payment to the County Mayor's Office in the amount of the civil fine prior to the court date. Notwithstanding anything to the contrary, neither a publisher nor depositor shall be liable for violating Sections 11, 12, or 13 if such publisher or depositor can demonstrate, by a preponderance of the evidence, that written procedures were established and operating at the time to reasonably comply with said provisions and that the subsequent distribution is the result of an isolated or random error.

SECTION 22. NON-COMPLIANT PROPERTY OWNERS. Any person that owns property, whether open and/or vacant or occupied, that violates this Resolution may, in Rutherford County's sole discretion, be cited for a separate violation of this Resolution daily or Rutherford County may remove the

garbage, litter, refuse or rubbish and send a statement to the owner itemizing the cost of the removal. When garbage, litter, refuse or rubbish is on open and/or vacant or occupied property, Rutherford County shall give the owner notice as per Section 19 of this Section of the violation and the owner shall have ten (10) days after the notice in which to bring the property into compliance. After the expiration of ten (10) days following notice, Rutherford County can, in its sole discretion, enter onto noncompliant property and bring the property into compliance or begin issuing a daily fine of Fifty Dollars (\$50.00) for each day the property is not in compliance. If civil fines are elected by the County, the same procedure for citation and appearance in General Sessions Court as captured in Section 21 shall control. If the owner fails to reimburse Rutherford County for the cost of the removal within sixty (60) days of receiving notice, the itemized statement for removal shall constitute a lien upon the property as of the date the notice is filed and shall have priority from the date of the filing of the notice, but shall not affect, or have priority over, any valid lien, right, or interest in the property duly recorded, or duly perfected by filing, prior to the filing of the notice and shall not have priority over any real estate tax liens, whether attaching on the property before or after the filing of the notice. Notwithstanding anything to the contrary in this Resolution, (1) property used for agricultural purposes as defined herein is specifically exempted from Section 22 of this Resolution and (2) a property owner shall not be held in violation of this Resolution if, by a preponderance of the evidence, the property owner can prove that the owner has taken all reasonable steps to maintain property free of litter.

SECTION 23. RECORDING THE LIEN. Any lien as described in Section 22 shall be entered in the records of the Register of Deeds of Rutherford County. The lien shall be satisfied to the extent of the value of the consideration received at the time of the transfer of ownership, and if the lien is not fully satisfied at the time of transfer, it shall remain a lien upon the property until it is fully satisfied.

SECTION 24. APPEAL OF LIEN. If the property owner is aggrieved by the amount of the lien filed in accordance with Sections 22 and 23, the owner may submit the matter to the Chancery Court of Rutherford County to determine the appropriate amount of the lien. A decision made by the Chancery Court may be appealed according to the Tennessee Rules of Appellate Procedure.

SECTION 25. PENALTIES AND REIMBURSEMENT SEPARATE FROM OR IN ADDITION TO ANY CRIMINAL PROSECUTION. Littering is a crime in the State of Tennessee and this Resolution, as authorized by Tennessee Code Annotated § 39-14-508, is expressly intended to act as a civil deterrent or civil reimbursement, as the case may be, that can be brought independent of a criminal charge or charges or in addition to any criminal charge or charges brought by the State of Tennessee. A dismissal of a criminal charge or charges brought by the State of Tennessee stemming from the same nucleus of operative facts is not determinative for the civil charges as a less onerous burden of proof controls for civil fines than for criminal charges.

SECTION 26. PROCEEDS. All proceeds from the fines imposed by this part shall be deposited in the general fund of the county where the offense occurred and designated for county operating costs with preference given to litter prevention

programs and education such as those conducted by Keep America Beautiful.

SECTION 27. REWARD. Any person who reports information to a law enforcement officer that leads to the apprehension and conviction of a person for mitigated criminal littering shall receive a reward of Fifty Dollars (\$50.00). Any person who reports information to a law enforcement officer that leads to the apprehension and conviction of a person for criminal littering or aggravated criminal littering shall receive a reward of Two Hundred and Fifty Dollars (\$250.00). Rutherford County shall provide the reward money from the proceeds of the mandatory fines collected under Tennessee Code Annotated §§ 39-14-501-511 and this Resolution.

SECTION 28. ADMINISTRATIVE OFFICIAL. The Rutherford County Mayor shall be the administrative official for this Resolution.

SECTION 29. DISBURSEMENTS. The Rutherford County Mayor shall be empowered to authorize disbursements from the county general fund from the proceeds deposited from the civil fines to enforcement of this Resolution covering all litter prevention, control, and education programs to be funded.

SECTION 30. AGREEMENTS WITH CITY MAYORS OR MANAGERS. The Rutherford County Mayor shall be empowered to enter into agreements with city mayors or city managers within Rutherford County to disburse money for violations of litter control and prevention laws that occur within municipal boundaries.

SECTION 31. NECESSARY FISCAL STRUCTURE. Rutherford County shall establish the necessary fiscal structure within its accounting system to provide proper monitoring and auditing of its receipts and disbursements under this Resolution.

SECTION 32. That this Resolution shall take effect from and after its passage and after the complete Resolution has been published after its final passage in a newspaper of general circulation in Rutherford County, the public welfare requiring it.